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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

ATHENA H.,

Petitioner,

v.

THE SUPERIOR COURT OF  
LOS ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY DEPARTMENT  
OF CHILDREN AND FAMILY SERVICES,

Real Party in Interest.

B160147

(Super. Ct. No. CK44722)

ORIGINAL PROCEEDING; petition for extraordinary writ. Stephen Marpet, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Writ denied.

Robert A. Devine for Petitioner.

No appearance for Respondent.

Lloyd W. Pellman, County Counsel, and Angela Williams, Deputy County Counsel, for Real Party in Interest.

Law Offices of Lisa E. Mandel, and Gina Zaragoza-Cruz for the Minor.

Athena H., the mother of Constance L., petitions for extraordinary relief challenging the July 15, 2002 order of the juvenile court terminating reunification services and setting a hearing to select and implement a permanent plan. (Welf. & Inst. Code, § 366.21, subd. (e).)<sup>1</sup> We deny the petition.

### **BACKGROUND**

While pregnant with Constance, 18-year-old Athena, herself a former dependent of the juvenile court, regularly smoked marijuana and failed to seek prenatal care. Before her pregnancy, Athena occasionally used cocaine and methamphetamine. In addition, Athena had contracted sexually transmitted diseases for which she failed to obtain treatment. Athena was unemployed and depended on family and friends for shelter and support.

Constance was born in January 2001 with a positive toxicological screen for marijuana. She suffered respiratory and cardiac difficulties that resulted in neurological damage. On February 7, 2001, respondent Department of Children and Family Services detained Constance following her release from the hospital, placed her in the foster home of Sheila D., and filed a dependency petition.

The juvenile court adjudicated the petition on March 13, 2001. The court found that Constance was a dependent child because Athena's substance abuse history, including her use of marijuana, placed Constance at risk of being harmed. The court also found that the whereabouts and identity of Constance's father were unknown. Athena was advised that because of Constance's age, the court could terminate reunification services at the six-month review hearing.

Due to her neurological problems, Constance had to be fed by a tube. And she underwent physical and occupational therapy twice a week. Athena visited Constance approximately five times, but foster mother Sheila reported that Athena appeared uneasy when she held her daughter and never offered to feed her. Athena once changed

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

Constance's diaper, with some difficulty. A few times, Athena failed to show up for visits without canceling in advance. By April 2001, Constance's foster mother indicated an interest in adopting Constance.

On April 16, 2001, the court established a disposition plan in which Athena was required to complete a parent education course and a drug rehabilitation program, undergo random drug testing, and participate in individual counseling. The court further ordered the department to provide Athena monitored visits.

From April 2001 to July 2001, Athena visited Constance three times. The last visit was on July 8, 2001. From late September 2001 until late October 2001, Athena was incarcerated on a loitering conviction. She moved to Las Vegas immediately after her release from jail to live with relatives. On October 25, 2001, shortly after she had arrived in Las Vegas, Athena enrolled in a drug rehabilitation program. The program consisted of group sessions two times a week for four months and random drug testing. Athena did not seek out individual counseling because the program that she enrolled in told her it would evaluate her to determine if individual counseling was appropriate.

Athena drug-tested three times in November 2001, and each test turned out negative for drugs. But the result of her January 29, 2002 test was positive for marijuana. The counseling center communicated via letter that there had been a question about the accuracy of the January 29, 2002 test. Athena claimed that she underwent a second, more comprehensive urinalysis on January 29, 2002, that indicated that she did not have drugs in her system.

Athena tried to keep in regular telephone contact with Constance's foster mother and was kept updated about Constance's medical problems. In January 2002, Athena sent Constance a birthday gift. After numerous continuances, the "six-month" review hearing was held on February 6, 2002. The court found by clear and convincing evidence that Athena had not complied with the reunification plan. The court terminated reunification services and scheduled a hearing to select and implement a permanent plan for June 5, 2002.

In March 2002, Athena completed the drug rehabilitation program, which consisted of 32 group sessions. She reportedly had consistent attendance and regular participation. Her “prognosis” was stated as “[f]air” and that she “should do well, provid[ed] she continue[d] using recovery skill[s] learned in treatment.”

Meanwhile, Athena had petitioned for writ relief from the court’s order setting a hearing to select and implement a permanent plan. On June 4, 2002, this court issued a writ of mandate directing the juvenile court to vacate its February 6, 2002 order terminating reunification services and setting a hearing to select and implement a permanent plan. (*Athena H. v. Superior Court* (June 4, 2002, B156411) [nonpub. opn.].) We found that although the court properly found that the department had provided Athena with reasonable reunification services, the court erred in failing to determine whether there was a substantial probability that Constance could be returned to Athena within six months. (*Dawnel D. v. Superior Court* (1999) 74 Cal.App.4th 393, 398–400.)

In the interim, on May 22, 2002, Constance experienced seizure-like symptoms and was taken to the hospital. She was discharged from the hospital on May 29, 2002. The hospital discharge papers listed Constance’s diagnoses as “[p]robable Ketotic Hypoglycemia” with the “[s]eizure secondary to Hypoglycemia.” Foster mother Sheila was instructed on how to check Constance’s blood sugar level.

On June 5, 2002, the juvenile court ordered the department to reinstate family reunification services for Athena. On that day, Athena communicated to Sheila via e-mail that on April 10, 2002, she gave birth to a boy, Donte. Athena reported that she regularly received prenatal care during her pregnancy and she had not used any drugs. She further reported that Donte’s birth was induced a week early because he was not receiving proper nutrition through her placenta, but this problem had “nothing to do with [her] it [was] just a problem some [people] have.” Athena confided to Sheila that she had been “scared” to tell her about Donte earlier because she thought Sheila would be disappointed with her and because she worried that authorities would take Donte from

her. But she no longer was worried about the latter scenario because Donte was healthy and she was providing him with good care.

Sheila replied by e-mail and told Athena about Constance's recent seizure. Sheila explained that Constance was diagnosed as having hypoglycemia and that as a result she was on a different formula and Sheila had to monitor her blood sugar on a daily basis. Sheila suggested to Athena that visits not occur immediately because Constance had several upcoming medical and therapy appointments.

On June 11, 2002, the court ordered the department to initiate contact with the state of Nevada for the purpose of assessing placement of Constance there with Athena. On that day, Sheila contacted Athena about scheduling a visit and suggested June 28, 2002, at the park near Sheila's home. Athena asked for an earlier date because it conflicted with Athena's mother's work schedule and Athena relied on her mother for transportation. On June 20, 2002, after several e-mail exchanges during which Sheila and Athena attempted to come up with a different date, Athena learned that her mother would not have to work on the date originally proposed for the visit.

On June 28, 2002, Athena visited Constance at a park in Rancho Cucamonga. Athena arrived from Las Vegas by car, accompanied by her mother, her brother, and her son, Donte. It was Athena's first visit with Constance since February 6, 2002. Sheila reported that Athena supervised Constance while she played and sometimes held the child's hand. During play, Constance became pale. Sheila had Constance rest in the shade. Constance's blood sugar level tested low and Sheila fed Constance formula through her feeding tube. Thereafter, Constance played some more. After Donte started to cry, Athena indicated that she and her family would have to leave because she needed to feed Donte. Constance gave Athena and the other family members hugs goodbye and resumed playing. The visit lasted 90 minutes.

On July 15, 2002, the court held a review hearing. Athena presented evidence that on June 6, 2002, she followed up on a counseling referral and as a result was currently under individual counseling once a week. Since the time of the referral, Athena was

tested negative for drugs four times. Athena testified that she took the drug tests at the request of her counselor on the days that she went to counseling. She also testified that she tested one time between February 2002 and June 5, 2002, the date reunification services were reinstated. The test result, too, was negative for drugs. The case social worker testified that she received documents showing that Athena also completed a parenting program.

When asked by her attorney to explain her “understanding” of Constance’s medical problems, Athena replied, “For instance, the young lady over there,” referring to the social worker who had just testified, “said hypoglycemia and the GT tube and seizure activity as far as having low blood sugar and stuff.” Counsel asked Athena if she understood “that as far as testing Constance they would have to test her on a daily basis” to which Athena answered that she was “aware of that.” Counsel also asked Athena if she had spoken to Constance’s caretaker about the child’s medical problems. Athena answered, “Every time I talked to Sheila I asked her what was going on with Constance and about her medical needs. She tells me about her medical needs. I ask her, ‘What’s going on?’ When I went to visit her, she showed me about the pricking and the GT tube.” Athena added that the caretaker demonstrated for her how to feed Constance and that shortly after Constance’s birth, she (Athena) fed Constance using the feeding tube.

The department requested the court to terminate reunification services and schedule a hearing to select and implement a permanent plan. Constance’s court-appointed attorney joined in the department’s request.

The court found that Athena failed to visit Constance from the time of the last review hearing, February 6, 2002, up to June 28, 2002, for “unknown reason[s].” The court further found that Athena failed to fully comply with the reunification plan, namely, that she had not undergone random drug tests. The court further found no credible showing that Athena had the knowledge and skills “to take care of this very sick child.” Based on the forgoing, the court concluded that returning Constance to Athena’s custody would create a substantial risk of detriment to Constance’s well-being and there was no

likelihood that Constance could be returned to Athena's care within the next six months. The court thus terminated reunification services and scheduled a hearing to select and implement a permanent plan for Constance.

### **DISCUSSION**

Athena contends that the court erred in not returning Constance to her custody because Athena had substantially complied with the reunification plan. Alternatively, Athena contends that the court should have ordered that she receive an extension of reunification services for six months. We reject both contentions.

Athena contends that the court erred in not returning Constance to her custody because she substantially complied with the reunification plan. Athena cites her completion of a drug rehabilitation program, her maintaining regular telephone and e-mail contact with foster mother Sheila, her completion of a parenting program, her negative drug tests, and her recent enrollment in individual counseling. Athena also points out that she received prenatal care while pregnant with Donte, that Donte was healthy, and that she was raising him without court intervention.

The court did not err in determining that it would be detrimental to return Constance to Athena's custody. Even assuming that Athena had substantially complied with the reunification plan, substantial compliance is but one factor for a court to consider in determining whether it would be detrimental to return a child to its parent's custody. (*In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1141–1143.) The court must also consider the parent's progress in overcoming the problems which led to the dependency, the recommendations of the social worker and the child advocate, if any, and the effect of return on the physical and emotional well-being of the child. (§ 366.21, subd. (e).)

Athena's compliance with the case plan commenced in late October 2001, *seven* months after Athena had been advised on March 13, 2001, that she had *six* months to reunite with Constance. Even so, Athena has not fully completed the plan, having failed to undergo *random* drug testing. And notwithstanding Athena's partial compliance with the reunification plan, she had yet to establish that she had the insight, knowledge and

skills required to care for a medically fragile child such as Constance. For example, Athena's testimony reflects that she did not fully comprehend Constance's medical ailments or the steps necessary to feed her and test her blood sugar level. At best, Athena demonstrated she could care for her son, Donte, a healthy infant with no discernible medical problems. Constance does not fall in this group.

But most troublesome is Athena's near total lack of contact with Constance. By the time of the July 15, 2002 hearing, Constance had been in the care of Shelia for nearly 17 months. Athena had visited her daughter approximately 10 times, only two of which occurred in 2002, and sent her daughter a birthday card. Thus, while Athena has made efforts to overcome her personal problems which led to Constance's dependency, she has failed to establish any type of "bond" with the child. Instead, the only parental figure in Constance's life was Sheila. The absence of any bond between Constance and Athena would subject Constance to a severe risk of emotional harm should she be wrenched from Sheila and returned to Athena's custody. Accordingly, substantial evidence supports the trial court's finding of detriment. (See *In re Dustin R.*, *supra*, 54 Cal.App.4th at p. 1142 [mother's limited awareness of emotional and physical needs of children and limited awareness of her role in creating dependency problem was substantial evidence of detriment notwithstanding mother's compliance with reunification plan].)

We also find no merit with Athena's contention that the court should have ordered that reunification services be extended an additional six months because Constance could have been safely returned to her within that time period.

Because of Constance's age, Athena was statutorily entitled to only six months of reunification services. (§ 361.5, subd. (a)(2).) Notwithstanding this statutory requirement, the court was permitted to order an extension of reunification services for a time period not exceeding 18 months from the date Constance was removed from Athena's physical custody. (§ 361.5, subd. (a).)

"The court shall extend the time period . . . if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or



guardian within the extended time period[.]” (§ 361.5, subd. (a); see also § 366.21, subd. (g) [if a dependent child is not returned to his or her parent at the conclusion of the statutorily mandated reunification period, the court may continue the case, to a date not to exceed the 18-month date, if the court finds “a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time”]; Cal. Rules of Court, rule 1460(f)(1)(E).)

In this case, the 18-month date was August 7, 2002. Athena suggests that the 18-month date should be extended to December 7, 2002, because she had not received reunification services during the four months that her first petition for writ relief was pending. Even assuming the 18-month date is December 7, 2002, the record is devoid of evidence that Constance could be safely returned to Athena and be safely maintained under Athena’s care within that time period. As noted, Athena demonstrated unfamiliarity with the medical conditions and disabilities Constance endured, as well as the special services she required for daily living. In addition, Constance was not bonded to Athena. Accordingly, the court did not err in denying Athena’s request for an extension of reunification services.

#### **DISPOSITION**

The petition is denied.

NOT TO BE PUBLISHED.

MALLANO, J.

We concur:

SPENCER, P. J.

ORTEGA, J.